



DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP-2020-0023]

Receipt of Domestic Interested Party Petition Concerning the Tariff Classification of Mixtures of Dried Garlic and Dried Onion

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of receipt of domestic interested party petition; solicitation of comments.

SUMMARY: U.S. Customs and Border Protection (CBP) has received a petition submitted on behalf of a domestic interested party requesting the reclassification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain dried garlic and dried onion mixtures. CBP currently classifies the subject dried garlic and dried onion mixtures under subheading 0712.90.85, HTSUS, as mixtures of dried vegetables.

Petitioner contends that the proper classification for the subject dried garlic and dried onion mixtures is under subheading 0712.90.40, HTSUS, as dried garlic. This document invites comments with regard to the correctness of the current classification.

DATES: Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: You may submit comments, identified by docket number, by the first method listed below:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2020-0023.
- Mail: Due to COVID-19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

Instructions: All submissions received must include the agency name and docket number for this notice of domestic interested party petition concerning the tariff classification of dried garlic and dried onion mixtures. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents, exhibits, or comments received, go to <http://www.regulations.gov>. Due to the relevant COVID-19-related restrictions, CBP has temporarily suspended on-site public inspection of public comments.

FOR FURTHER INFORMATION CONTACT: Tanya Secor, Food, Textiles and Marking Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, at (202) 325-0062, or by e-mail at tanya.j.secor@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

A petition has been filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516), on behalf of Olam West Coast Inc. (Petitioner or Olam), which is an agri-business and supplier of food, ingredients, and raw materials, based in Fresno, California. Olam manages a wide range of production, processing, and supply of agricultural products in twelve states, with a majority of its operations in California. Olam's largest onion and garlic plant is in Gilroy, California. Olam meets all of the requirements of a domestic interested party set forth in 19 U.S.C. 1516(a)(2) and section 175.3(a) in title 19 of the Code of Federal Regulations (19 CFR 175.3(a)).

In New York Ruling Letter (NY) N276018 (November 23, 2016), NY N276015 (November 23, 2016), NY N267292 (August 27, 2015), NY N259557 (November 28, 2014), and NY N256957 (September 23, 2014), CBP classified various mixtures of dried (also referred to as dehydrated) garlic and dried onions as mixtures of dried vegetables in

subheading 0712.90.85 of the Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared: Other vegetables; mixtures of vegetables: Other vegetables; mixtures of vegetables.” Petitioner contends that the proper classification for the dried garlic and dried onion mixtures is dried garlic in subheading 0712.90.40, HTSUS, which provides for “Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared: Other vegetables; mixtures of vegetables: Garlic.”

Applicable Legal Principles

Classification under the HTSUS is determined in accordance with the General Rules of Interpretation (GRIs) and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation (ARIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, GRIs 2 through 6 may be applied in order.

The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* Treasury Decision (T.D.) 89-80, 54 FR 35127, 35128 (August 23, 1989). The EN for heading 07.12, states, in pertinent part, that the heading also covers dried vegetables, broken or powdered, such as asparagus, cauliflower, parsley, chervil, onion, garlic, celery, generally used either as flavouring materials or in the preparation of soups.

Elaboration of the Petitioner's Views

Petitioner contends that the proper classification for the subject dried garlic and dried onion mixtures is subheading 0712.90.40, HTSUS, which provides for “Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared: Other vegetables; mixtures of vegetables: Garlic.” Petitioner contends that the subject dried garlic and dried onion mixtures are not “mixtures of vegetables” because they are “overwhelmingly composed of dried garlic” and therefore are “appropriately classified as dried garlic under” subheading 0712.90.40, HTSUS, pursuant to GRI 3(b).

Petitioner argues that whether a given product is to be considered a “mixture of vegetables” depends on the specific vegetables included in the mixture, the relative quantities of such vegetables, and the impact that the non-predominant vegetables have on the product's essential character. Petitioner also urges CBP to consider how a given product is marketed to determine whether industry standards and/or consumers consider the product in question to be a “mixture of vegetables.” Based on these factors, Petitioner urges CBP to find that the subject dried garlic and dried onion mixtures are not “mixtures of vegetables,” but rather dried garlic products. It is Petitioner's view that dried garlic imparts the essential character. In support of its argument, Petitioner relies

on a ruling where dried garlic mixed with chemical substances is classified as “dried garlic” in subheading 0712.90.40, HTSUS. *See, e.g.*, NY N270709 (December 15, 2015) (dried garlic mixed with calcium stearate and dried garlic mixed with silicon dioxide).

Analysis Used by CBP in Prior Rulings

Subheading 0712.90.85, HTSUS, provides for “Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared: Other vegetables; mixtures of vegetables: Other vegetables; mixtures of vegetables.” There are no specifications or requirements to qualify as a mixture in the section notes, chapter notes, or ENs. The EN for heading 07.12 provides guidance that both garlic and onion are vegetables. “Mixture” is not defined in the HTSUS.

In the rulings at issue, the mixtures of dried vegetables are comprised of varying combinations of the components dried garlic and dried onion. Specifically, NY N256957 classifies a mixture of 50 percent dried garlic and 50 percent dried onion; NY N259557 also classifies a 50-50 percent dried garlic and dried onion mixture; NY N267292 classifies three dried garlic and dried onion mixtures covering 90 percent dried garlic and 10 percent dried onion, 95 percent dried garlic and 5 percent dried onion, 99 percent dried garlic and 1 percent dried onion; NY N276015 also classifies three vegetable mixtures, one of 64 percent dried garlic and 36 percent dried onion, one of 87 percent dried garlic and 13 percent dried tomatoes, one of 80 percent dried onion and 20 percent dried celery; NY N276018 classifies two dried garlic and dried onion mixtures, one of 99 percent dried garlic and 1 percent dried onion and the other of 1 percent dried garlic and the 99 percent dried onion. All of these various dried vegetable mixtures are classified in subheading 0712.90.85, HTSUS, as mixtures of dried vegetables, notwithstanding the amount of the component dried garlic. These rulings classified the mixtures of dried garlic and dried onion under GRIs 1 and 6, because the subject merchandise are all mixtures of dried vegetables and there are no requisite amounts to qualify as a mixture.

Comments

Pursuant to section 175.21 of the CBP Regulations (19 CFR 175.21), before making a determination on this matter, CBP invites written comments on the petition from interested parties.

The domestic interested party petition concerning the tariff classification of certain dried garlic and dried onion mixtures, as well as all comments received in response to this notice, will be available for public inspection on the docket at www.regulations.gov.

Authority

This notice is published in accordance with 19 U.S.C. 1516 and section 175.21 of the CBP Regulations (19 CFR 175.21).

Troy A. Miller, the Acting Commissioner, having reviewed and approved this document, is delegating the authority to electronically sign this document to Robert F. Altneu, who is the Director of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the *Federal Register*.

Dated: August 6, 2021.

Robert F. Altneu,

Director, Regulations & Disclosure Law Division,

Regulations & Rulings,

Office of Trade,

U.S. Customs and Border Protection.

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